IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 31951 of 2007(D)

PETITIONER:

K.J. THOMASKUTTY,
PROPRIETOR, MODERN ROCK MINING INDUSTRIES,
VADASSERIKKARA P.O., PATHANAMTHITTA.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,DEPARTMENT OF REVENUE
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. THE REGIONAL TRANSPORT OFFICER,
THIRUVANANTHAPURAM.

3. MOTOR TRANSPORT WELFARE FUND INSPECTOR,
PATHANAMTHITTA.

BY GOVT. PLEADER MR. K.P. PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 31951 OF 2007 D
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Dated this the 7th November, 2007

J U D G M E N T

Petitioner has a metal crushing industry owning tipper lorries used for the supply of crushed metal. When the 2nd respondent refused to accept motor vehicles tax in respect of his vehicles, in the absence of a clearance certificate issued under Section 8A of the Motor Transport Workers Welfare Fund Act, 1985 (for short the Act), this writ petition has been filed praying to direct the 2nd respondent to accept tax without insisting on payment of contribution under the Act. Petitioner also seeks a declaration that he is not liable to pay contribution under the Act.

2. Petitioner disputes the applicability of the Act and consequently the liability to pay the contribution on the basis that the establishment is not a motor transport undertaking as defined in Section 2 (h) of the Act. Petitioner also contends that his employees do not come within the scope of Section 2(d)

defining the term 'employee' and that the petitioner is not an employer as defined in Section 2(e) of the Act.

3. In my view, the contention raised by the petitioner is plainly unsustainable and is squarely covered against him in view of the judgment of this Court in ***Quilon District Petroleum Dealers' Association v. State of Kerala*** {2006 (1) KLT 862}. That was a case where the petitioner therein had disputed the applicability of the Act, raising identical contentions, in respect of dealers owning tanker lorries for the purpose of lifting petroleum products. After elaborately considering the issue a learned Single Judge of this Court held as follows:

> "The aforesaid definitions of "private carrier" having been incorporated by reference into the Welfare Fund Act, the definition of the term "motor transport undertaking" in the Welfare Fund Act includes a private carrier which means an owner of a transport vehicle other than a public carrier who uses the said vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business, not being a business of providing transport. There could be no doubt that a petroleum dealer who puts his tanker lorry for the purpose of lifting petroleum products from the installations of the petroleum companies to the retail outlet is the owner of a transport vehicle other than a public carrier and the vehicle is used

> solely for the purpose of carriage of goods, the carriage of which is necessary for the purpose of his business which is not a business of providing transport. Hence, he is a private carrier as defined in S. 2(22) of the Motor Vehicles Act, 1939 and therefore, a motor transport undertaking as defined in the Welfare Fund Act."

In view of the aforesaid judgment, the contentions raised by the petitioner are totally unacceptable.

The writ petition is only to be dismissed and I do so.

ANTONY DOMINIC
JUDGE

jan/-